IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6546 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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M. F. MALEK - Petitioner
Versus
AGRICULTURAL DIRECTOR & 3 - Respondents

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Appearance :
MR SUNIL MEHTA for MR SK BUKHARI for Petitioner.
MR LB DABHI, AGP for Respondent No. 1 & 2.
FRESH NOTICE REQD(N) for Respondent No. 4.
NOTICE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/02/2006

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the order dated 22.09.1987 passed by the Joint Director (Agriculture) (Soil Conservation),Baroda Division and the order dated 03.10.1987 passed by the Assistant Director (Soil Conservation), Gujarat Land Development Corporation Limited, Nadiad.

2.It is the case of the petitioner that in view of the report of the Special Officer for departmental inquiries, the Joint Director has issued a show-cause notice dated 03.06.1987 stating that allegations made against the petitioners were partly proved and, therefore, the petitioner has committed breach of Rules 2 and 3 of the Gujarat Civil Services (Conduct) Rules, 1971 and called upon the petitioner to

explain why action under Rule 6 (4) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 should not be taken against the petitioner. No reply has been given by the petitioner to the said show-cause notice and accordingly, the respondent No. 2 has passed an order on 22.09.1987 withholding one increment of the petitioner for one year with future effect. The consequential order has been passed by the Assistant Director, Gujarat Land Development Corporation, Nadiad and being aggrieved by the said two orders, the petitioner has filed the present petition.

3.Mr. Sunil Mehta, learned advocate appearing for Mr. S.K. Bukhari for the petitioner has submitted that the charge levelled against the petitioner was to the effect that instead of making payment of Rs. 500/- to the farmers, the payment was made to the labourers. There is no dispute about the fact that the payment was not

made. He has also submitted that the Agricultural Supervisor Shri B.V. Shah who himself had made payment as stated in his deposition before the Inquiry Officer was also charge-sheeted for the same misconduct arising out of the same incident and without making any inquiry whatsoever, the respondent No. 2 vide his order dated 23.06.1987 withdrew the charges levelled against the said Shri B.V. Shah by declaring him innocent and, therefore, the inquiry initiated against the petitioner and the orders dated 22.09.1987 and 03.10.1987 passed by the respondents imposing punishment of withholding of one increment with future effect against the petitioner were absolutely illegal, discriminatory and arbitrary in nature and are violative of Articles 14 & 16 of the Constitution of India. He has further submitted that the alleged incident was taken place in 1979 and inquiry was initiated after more than four years. Because of this gross and

inordinate delay, the proceedings initiated against the petitioner are required to be quashed and set aside. In support of this contention, he has relied on the decision of this Court in the case of *Mohanbhai Dungarbhai Pamar V/s. Y.B. Zala and another, 20 G.L.R. 497* wherein this Court has taken the view that a police constable must be given an opportunity to effectively explain the circumstances in which the lapse occurred in order to satisfy the disciplinary authority that the lapse was neither intentional nor deliberate nor on account of indifference or negligence but was occasioned by circumstances beyond his control. If he can satisfy the disciplinary authority on this point the charge cannot be established. Can he, however, at all offer a satisfactory explanation on the basis of his memory when the charge is levelled one and half years after the occurrence ? Having regard to the very nature and content of the charge, a delay of about 1½

years must be considered fatal from the point of view of affording reasonable opportunity to the constable concerned to show cause against the charge levelled against him. It would be asking for the impossible to expect the constable concerned to explain satisfactorily the reason which occasioned the delay in reporting for duty. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause. This would amount to violation of principles of natural justice. Mr. Mehta has, therefore, submitted that in the present case, there is gross delay of about four years which would amount to denial of the reasonable opportunity to show cause and hence, the whole proceedings are, therefore, in violation of the principles of natural justice and, therefore, the impugned orders are required to be quashed and set aside.

4.Mr. L.B. Dabhi, learned Assistant Government

Pleader appearing for the respondent Nos. 1 & 2 has submitted that inquiry was conducted and reasonable opportunity was given to the petitioner. The petitioner has not submitted any reply to the show-cause notice and accordingly, the respondent No. 2 & 3 have passed the impugned orders. Since there is violation of the rules and regulations framed by the respondents, necessary actions are required to be taken against the petitioner and accordingly, punishment of stoppage of one increment with future effect was imposed on the petitioner. When the proper procedure has been followed, inquiry was conducted and reasonable opportunity was given to the petitioner to prove his innocence, the penalty imposed cannot be interfered with by this Court while exercising powers under Article 226 & 227 of the Constitution of India. Mr. Dabhi has also relied on the affidavit-in-reply filed by the respondent No. 2 wherein it is stated that

after the irregularities of payment were noticed by the department, the case of inquiry was under scrutiny. After the scrutiny of the case, the department felt that this was a serious irregularity. The inquiry was, therefore, set up as per departmental procedure. The petitioner was found defaulter and hence, he was given charge-sheet for irregular payment of subsidy to wrong persons. During the inquiry it was also found that the amount of lead was also wrongly paid which was required to be paid only if work goes beyond 15 meters lead. Thus, it is clear that the petitioner has wrongly made entries in measurement books. Mr. Dabhi has further submitted that the submission of the petitioner that he had sent his reply for the defense against the show-cause notice dated 27.04.1983, vide his letter dated 30.05.1983 is also not correct as the same was not received by the Joint Director (Agriculture). The petitioner

has been given show-cause notice on 23.06.1987 asking him as to why disciplinary action under Gujarat Civil Service (Discipline and Appeals) Rules should not be taken against the petitioner for breach of Rule 2 & 3 of Gujarat Civil Service conduct rules 1971 and the petitioner has not given any reply to the said notice. Accordingly, the impugned orders were passed. The Inquiry Officer has taken all aspects in the matter and held the petitioner guilty. He has, therefore, submitted that the charge levelled against the petitioner for making illegal payment of subsidy has been proved and hence, the punishment imposed on the petitioner is just and proper and the same cannot be interfered with.

5.In support of his submission, Mr. Dabhi has relied on the decision of the Hon'ble Supreme Court in the case of *State of Rajasthan and others V/s. Sujata Malhotra, (2003) 9 SCC 286*

wherein the Court has taken the view that the High Court possibly would not be within its power to interfere with an order of punishment inflicted in a departmental proceeding until and unless any lacuna in the departmental proceeding is noticed or found.

6.Mr. Dabhi has further relied on the decision of the Hon'ble Supreme Court in the case of *Union of India and others V/s. P. Chandra Mouli and others, (2003) 10 S.C.C. 196* wherein it is held that it is well settled that once the charge against a delinquent is established, the quantum of punishment is for the employer to decide and the court ordinarily would not interfere with the order on the quantum of punishment once the court comes to a conclusion that there has been no infirmity with the procedure.

7.After having heard learned advocates appearing

for the respective parties and after having gone through the memo of petition and affidavit-in-reply and the authorities cited before the Court, the Court is of the view that there is no lacuna in the departmental proceedings and adequate opportunity is given to the petitioner. The petitioner has not availed of the opportunity and reply to the show-cause notice has not been given and considering the nature of charge, punishment of withholding of only one increment with future effect was imposed on the petitioner. The two authorities have applied their mind and have taken the decision and hence, it is not just and proper for this Court to interfere in the mater. The grounds raised by the petitioner for challenging the impugned orders are of discrimination and delay. However, they did not weigh with the Court as there is nothing on record to show that on what ground, the proceedings were dropped against the superior

officer of the petitioner. It is an admitted position that the petitioner has not given any reply to the show-cause notice and hence, the charges levelled against the petitioner have gone unchallenged. Even the reply dated 30.05.1983 has been produced before the Court for the first time which has not been received by the respondents. So far as delay is concerned, in affidavit-in-reply it is properly explained as to why proceedings were not initiated. Even this contention was not raised and in this view of the matter, it cannot be said that the impugned orders are passed in violation of the principles of natural justice.

8.As per the law laid down by the Hon'ble Supreme Court in the two decisions referred to above, the Court is very reluctant to interfere in the order of punishment which is passed after following due procedure of law and no infirmity is found therein.

9.In this view of the matter, the petition is dismissed. Rule is discharged without any order as to costs.

[K.A. PUJ, J.]

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